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ART. XIII.—*The first part of the Institutes of the Laws of England, or a Commentary upon Littleton, &c. By Sir Edward Coke. First American from the sixteenth European edition. Philadelphia, 1812. 3 vols. 8vo.*

IT is a serious misfortune to the student of our law, that we possess no detailed account of most of the great luminaries of the science, in a form accessible to ordinary readers. While the civilians can produce many valuable works intended to guide the inquiries of the beginner through the mazes of Roman jurisprudence, and at the same time gratify his curiosity with regard to the writers themselves whose names stand in the title page of the books given him to peruse, we, on the contrary, have little knowledge of the immense mass of books and authors composing our juridical treasures, excepting what can be gleaned from the meagre columns of a bookseller's catalogue, or the voluminous repositories of general history and biography. Hoffman's Course of Study does something towards supplying this deficiency; but the whole subject has been consigned to such unworthy neglect, that it still remains almost an unwrought field for the researches of the jurist. We have placed the title of the much improved American edition of sir Edward Coke's Commentary upon Littleton before this article, in order to add our mite to the department of legal biography, by laying before our readers some account of the life and writings of the distinguished commentator.

Sir Edward Coke was born in the year 1550, at Mileham, in the county of Norfolk. His father Robert, a gentleman of good family and an eminent barrister, died whilst this his only son was young, leaving him the heir of a large fortune. Edward was first sent to the free school of Norwich, thence removed to Cambridge, and after residing at the university about four years entered as student of the Inner-Temple. The quick penetration and sound judgment, which he there displayed, occasioned his being called to the bar at an early period, namely, after a novitiate of six years, which was then accounted a very extraordinary mark of approbation. The first cause in which he appeared in the court of queen's bench, as we learn from his own report of it, was in 1578, in the twenty-eighth year of his age.* About the same time he was appointed reader of Lyon's Inn, and so continued for three years, during which space his lectures were very much resorted to, in consequence of which his reputation and practice increased so rapidly, that, before he had been long at the bar, he paid his addresses to a lady of one of the first families and best fortunes in his native county. This lady, Bridget, daughter and coheirress of John Paston, he shortly after married, receiving with her thirty thousand pounds and becoming allied to some of the best houses in the kingdom.

From this time he continued to rise with unexampled rapidity; the cities of Coventry and Norwich chose him their recorder, he was engaged in all the great causes of Westminster hall, acquired the favour of the lord treasurer Burleigh, and was frequently consulted on the queen's affairs. His large estate and great credit in the county of Norfolk recommended him to the freeholders of that county and procured his election as knight of the shire, in which capacity he distinguished himself so much as to be made speaker in the parliament held in the thirty-fifth year of Elizabeth.† He was then queen's solicitor, from which post he was soon advanced to that of attorney-general.

Mr Coke, becoming a widower by the death of his wife shortly after he received the appointment of attorney-general, paid his addresses to another lady of rank and fortune, the lady Hatton, relict of sir William Hatton, and sister of Thomas lord Burleigh, the oldest son of the lord treasurer Burleigh.

* The case of Lord Cromwell in Coke's Rep. pt. iv, f. 14, a.

† D'Ewes Journal of Parliament, p. 469.

This second marriage, which took place in 1598, proved very unhappy, and even the celebration of it caused the parties no little vexation. So much notice was taken of irregular marriages this year, that archbishop Whitgift had signified to the bishops of his province that he expected they would be diligent in bringing to prosecution all persons, who should be guilty of any irregularity in the celebration of marriage. Whether it was that the attorney-general did not advert to this circumstance, or that he looked upon the quality of lady Hatton and of himself and the consent of her family as setting them above such restrictions,—they were married in a private house without either bans or license. Hereupon a prosecution was commenced in the archbishop's court against them, lord Burleigh, the rector who officiated at the marriage, and several other persons, for contempt of the authority of the church; but on their submission by proxies they were absolved from the penalties, which they had incurred, because, says the record, they had offended, not from contumacy, but from ignorance of the law in this particular. The prosecution does not seem to have proceeded from any personal animosity of the archbishop's; on the contrary, this prelate is known to have had great esteem for Coke; and when the latter was appointed queen's attorney, Whitgift sent him a copy of the New Testament, with a message to this effect, that *he had now studied common law enough, and should thereafter study the law of God.* Nor is it probable that Coke intended to slight the church by his informal marriage, because he was always a firm friend to the church and the clergy; which is apparent from an extraordinary vote of thanks given him under seal by the chapter of the cathedral church of Norwich for his gratuitous and unsolicited exertions in preserving many of the estates of the chapter from the illegal practices of persons claiming them under pretence of concealments; as also from his liberality in the bestowment of the numerous benefices in his gift, in regard to which he frequently declared, among the many other memorable sayings of his which are recorded, that *he would have church-livings pass by livery and siesin, not by bargain and sale.*

Of the numerous distinguished lawyers, who flourished in the latter part of the reign of Elizabeth, Yelverton, Philips, Fleming, Croke, Bacon, Popham, Anderson, Dodderidge, Hobart and many others, none was treated with greater res-

pect in his profession or in private life than Coke, as queen's attorney; for he was consulted by the ministry in all matters of difficulty, and furnished them with a legal color for some of their proceedings, which might otherwise have been esteemed unjust and extraordinary. The most important affair, in which he was officially concerned at this time, was the prosecution of the unfortunate earl of Essex, who, together with his kinsman the earl of Southampton, was brought to trial before the lords in the year 1600, for his ill-advised attempt to stir up the city of London to rebel and assist him in getting possession of the queen's person by force of arms. The evidence against these noblemen was full and decisive, and their guilt unquestioned; but they constantly accused the attorney-general, who conducted the prosecution for the crown, of misinterpreting their motives, pressing them with undue severity, abusing the ears of the lords with slanderous charges, and acting from a desire to subserve the personal enmity of the ministers toward the accused, rather than from a sincere regard to justice. The earl of Essex especially complained of being talked out of his life by corrupt orators; and Southampton, in his defence, said to Coke: *you urge the matter very far and you wrong me therein; my blood be upon your head.* But although the attorney-general sometimes addressed these noblemen with considerable sharpness in the course of the trial, he does not seem, from the report of it which we have in the State Trials and in Camden's Elizabeth, to have extended their crime any further than he was borne out in doing by the law and the evidence.

As Coke had been in habits of intimacy and confidence with the ministers at the close of Elizabeth's reign, so he continued in the beginning of the next; there is even good reason to believe that the proclamation of king James and other state-papers of this period, were drawn up by him; and although he was not so eager, as were many persons of inferior rank, to gain admission to James, yet when the new king, on account of his peaceable accession, entertained the principal gentlemen of his kingdom at Greenwich (1603), he, together with Henry Lee, the lord mayor, and John Crooke, recorder of London, received the honor of knighthood.

In the same year happened the famous trial of sir Walter Raleigh on a charge of high treason before a court of special commissioners at Winchester; in the management of which

trial sir Edward Coke treated Raleigh with such intemperate and overbearing violence, as left an indelible blot upon his character. The whole plot, in which Raleigh was charged with being implicated, is now, as it was then, involved in the deepest mystery; and whether he was guilty or not, it is certain that the evidence produced at the trial was wholly insufficient, not to say palpably absurd; and the verdict must have been obtained from the jury by foul means in order to gratify the resentment of the king and his ministers against sir Walter. But the virulent abuse heaped on Raleigh by the attorney-general is no less remarkable than the weakness of the proofs on which the conviction was founded. Sir Edward Coke was not merely contented with continually styling Raleigh a notorious traitor, but even went so far as to bestow such epithets as *viper, monster, spider of hell, vile and execrable traitor, odious fellow and damnable atheist*, upon one of the most gallant and accomplished gentlemen of England, who both as a scholar and as a soldier deserved to be accounted the pride of his country, and who has rendered himself forever memorable in the history of our own, by his noble exertions in the discovery and settlement of America. The customs of that age, indeed, allowed great severity on the part of public officers toward state-criminals, the hardship of whose situation in this respect was much aggravated by their being denied counsel and obliged to reply to the charges brought against them without any preparation for defence; but sir Edward's zeal for the cause of justice, or obsequiousness to the crown, appears, in this case, to have hurried him beyond all bounds, so that on one occasion he treated the court itself with indecency. For when lord Cecil, one of the commissioners, interrupted sir Edward Coke, and, as some authors affirm, rebuked him for his conduct with much asperity, sir Edward immediately sat down and refused to speak any more, until he was urged and entreated to proceed by the commissioners, when, after much difficulty, he again rose and recapitulated all the evidence in a manner still more offensive than before his interruption.*

Sir Edward Coke's behavior in this trial raised up many enemies against him at the time, and has been justly and universally condemned ever since; but he retrieved his credit soon afterwards by his vigilance and sagacity in unravelling

* See Oldy's *Life of Raleigh* prefixed to his *History of the World*, and the *State Trials*.

the flagitious and monstrous project known by the name of the powder-treason, and by his admirable skill in managing the trial of the conspirators. At the trial of Garnet, especially, he gave such convincing proofs of his extensive capacity and solid judgment, as induced lord Cecil, now become earl of Salisbury, to say, in regard to the speech of the attorney general, that *he had never heard such a mass of matter better contracted or made more intelligible to a jury*; and the best judges in later times have confirmed his opinion, all accounting this speech sir Edward Coke's master-piece in forensic oratory.

In remuneration of his services on this and other occasions, the next year (1606) he was called to the degree of sergeant at law, preparatory to his being immediately afterwards made chief justice of the court of common pleas. It has been observed that the motto, which he gave upon his rings as sergeant, *lex est tutissima cassis*, proved very applicable to his subsequent fortune. By his promotion he made way for sir Henry Hobart to succeed him as attorney-general, which enabled sir Francis Bacon to attain the post of solicitor. It appears from a letter,* which Bacon wrote to Coke just before

* This letter is so curious and pertinent, that we think it worth extracting. It is contained in Bacon's Works, vol. iii, p. 234, and is as follows:

'Mr Attorney,

'I thought best, once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion. What it pleaseth you I pray think of me; I am one that know both mine own wants and other men's, and it may be, perchance, that mine mend, when others stand at a stay. And surely I may not endure, in public place, to be wronged without repelling the same to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the solicitor's place, the rather I think by your means, I cannot expect that you and I shall ever serve as attorney and solicitor together; but either to serve with another at your remove, or to step into some other course: so as I am more free than ever I was from any occasion of unworthy conforming myself to you, more than general good manners, or your particular good usage, shall provoke; and if you had not been short-sighted in your own fortune, as I think, you might have had more of me. But that time is passed. I write not this to show my friends what a brave letter I have written to Mr Attorney. I have none of those humors. But that I have written is to a good end, that is, to the more decent carriage of my master's service, and to our particular better understanding one of another. This letter, if it shall be answered by you in deed, and not in word, I suppose it will not be worse for us both; else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest, &c.

This letter is supposed to have been written in 1606, shortly before the appointment of sir Edward to the Common Pleas.

these several appointments took place, that sir Francis had repeatedly sought for the station of solicitor in the last reign and the present, and attributed his failure in not obtaining it to the bad offices of Coke ; which circumstance shows the origin and cause of the animosity that, as we shall presently see, grew up between these great men, and prompted them to harass and mortify each other whenever they could find an opportunity. After sir Edward Coke had served as chief justice of the common pleas a little over seven years with great probity and sufficiency, and as it seems without any desire to change, he was removed to the king's bench, ostensibly, indeed, because it was alleged that his great abilities might be more useful to the king in the latter situation, but in reality, as it has been supposed, through the intrigues of sir Francis Bacon, who was now in favor with the king, and who thus procured the place of attorney-general by the appointment of sir Henry Hobart to the common pleas in the room of sir Edward Coke. Sir Edward was also sworn of the privy council a few weeks afterwards (1613), although he had never shown himself a friend to the boundless prerogative claimed by the king, and in some particular cases thwarted the wishes of his master, which afforded sir Francis Bacon occasion to represent him in a rather unfavorable light to king James. Thus, when the king once desired to procure from the judges an extra-judicial opinion with regard to a supposed case of treason, sir Francis Bacon, who was chosen to manage the business, easily succeeded with the other judges of the king's bench, but met with an obstacle in sir Edward Coke, whose constant maxim it was to be *a judge in a court and not in a chamber*, and who, therefore, notwithstanding the dexterity and address of Bacon, returned an answer so little satisfactory, that sir Francis told the king he was glad to send it in the chief justice's hand-writing for his own discharge. Another time, however, when Oliver St John was sentenced to fine and imprisonment by the star-chamber (1615) for opposing a benevolence set on foot by the king, the chief justice delivered his opinion of the law very strongly for the benevolence, and might perhaps have thereby recovered the good graces of his master if this act of compliance had been more seasonable.

In the same year (1615) was discovered the poisoning of sir Thomas Overbury in the tower ; and as the chief justice, by

reason of his office, was obliged to be peculiarly active in bringing the offenders to punishment, and thus incurred the hatred of the many powerful persons implicated in the earl of Somerset's crime or injured by this minion's fall, we are not to wonder that his conduct in the whole affair was violently censured and grossly misrepresented by many of the contemporary historians. He was personally directed by the king to investigate the circumstances of the murder, so soon as the perpetration of it was known, and, at his own request, was joined in commission with several noblemen, in order that they might share the heavy responsibility, which he foresaw must attend such a scrutiny. In detecting the persons concerned in this dreadful tragedy, the chief justice proceeded with equal vigor and caution and with unwearied diligence, taking several hundred examinations, until all the subordinate agents in the murder were convicted upon the most ample evidence.* Notwithstanding the aspersions thrown out against sir Edward Coke for his conduct in this business, we have the highest authority for believing it to have been every way worthy of his exalted station and character, and that authority is the public declaration of his capital enemy sir Francis Bacon, who, in a speech before the court of star-chamber in the course of the proceedings, made use of the following memorable words: *This I will say of him, that is of sir Edward, and I would say as much to ages if I should write a story, that never man's person and his place were better met in a business than my lord Coke, and my lord chief justice in the cause of*

* Roger Coke's Detection, pp. 78, 79. This passage containing a curious notice of sir Edward's private life, we will extract part of it.—'When sir Ralph (Winwood) came to Royston and acquainted the king with what he had discovered about sir Thomas Overbury's murder, the king was so surprised herewith, that he posted away a messenger to sir Edward Coke to apprehend the earl. I speak this with confidence, because I had it from one of sir Edward's sons. Sir Edward lay then at the temple, and measured out his time at regular hours, two whereof were to go to bed at nine o'clock and in the morning to rise at three. At this time sir Edward's son and some others were in sir Edward's lodging, but not in bed, when the messenger about one in the morning knocked at the door, where the son met him and knew him. Says he: I come from the king and must immediately speak with your father. If you come from ten kings, he answered, you shall not; for I know my father's disposition to be such, that if he be disturbed in his sleep, he will not be fit for any business; but if you will do as we do, you shall be welcome, and about two hours hence my father will rise and you then may do as you please; to which he assented. At three sir Edward rung a little bell to give notice to his servant to come to him, and then the messenger went to him and gave him the king's letter,' &c.

Overbury.* But shortly after this, on the arraignment of sir Thomas Monson, one of the gentlemen charged with Overbury's murder, the chief justice dropped insinuations obscurely intimating that the death of Overbury had in it something of retribution, as if Overbury had been guilty of poisoning the deceased prince Henry. Whereupon, as men were led to suspect the king privy to the murder of Overbury, the king was so deeply incensed that the trial of Monson was laid aside and himself discharged, and sir Edward Coke severely rebuked for his indiscretion.

The king's displeasure on account of what the chief justice said was not a little heightened by the famous dispute concerning the jurisdiction of the court of chancery, between sir Edward Coke and the lord-chancellor Ellesmere, and still more by the business of the *commendams*, in which last the king conceived his sacred prerogative to have been very profanely handled; both of which happening nearly at the same time (1615, 1616) concurred, avowedly at least, to produce the disgrace of sir Edward Coke. For although sir Edward's activity in detecting the murderers of Overbury, and his consequent knowledge of the facts, rendered his assistance indispensably necessary to the king in convicting the earl and countess of Somerset, yet no sooner was this affair ended, than the enemies of the chief justice resolved upon effecting his downfall.

The dispute concerning the jurisdiction of chancery arose chiefly out of a statute of Edward III, which inflicted the penalties of a *præmunire* upon all persons, who should question or impeach, *in the court of another*, any judgment given in the king's courts. Now the right interpretation of the words *in the court of another*, or as the original has it *en autrui court*, is that they were designed to prohibit appeals from the king's courts to the legatine or other courts of Rome. The reason of the thing, as well as historical records, confirms this interpretation; but a doubt was started in the reign of James I, whether these words, or some others equally general in different statutes, did not prevent appeals from the common law courts to any other tribunal excepting the high court of parliament. Sir Edward Coke, who was very jealous of his authority, and his associates on the bench, thought it did; and

* State Trials, 2d ed. vol. i, p. 324.

therefore justice Crooke gave it in charge to the grand jury of Middlesex, among other things, that they should present any man, who, after a judgment rendered, had drawn that judgment to a new examination in any other court. Accordingly, on the last day of the term, indictments were preferred against suitors, solicitors, counsel, masters, and assessors in chancery, charged with a *præmunire* for making, conducting and deciding an appeal in two cases adjudged in the king's bench. These cases, as there adjudged, happened unfortunately to be cases of foul and manifest injustice. The first was that of Courtney against Glanville, as reported in the books,* where Courtney, who was a young gentleman, bought of Glanville a jewel represented by the latter to be worth £360, and as security for the payment of the purchase-money agreed to confess judgment in an action of debt on bond in the court of king's bench. Afterwards it appearing that the real value of the jewel was £20, and, on a writ of error being brought to reverse this judgment, the court affirming it,—Courtney exhibited his bill in chancery for relief against the bond : whereupon a release was decreed, and the defendant in chancery imprisoned for non-performance of the decree, but immediately discharged by a writ of *habeas corpus* returnable in the court of king's bench. The other case, of Bowles and Allen, was still more iniquitous. The defendant had prevailed upon the plaintiff's most material witness to withhold his testimony provided he could be excused. An agent of the defendant's, who undertook to manage this, carried the witness to a tavern, called for a gallon of sack in a pot, and, bidding him drink, as soon as the man had put the flagon to his lips, quitted the room. When the witness was called, the court was informed he was unable to come ; to prove which the defendant's agent was produced, who swore that *he left him in such a condition, that, if he continued in it but a quarter of an hour, he was a dead man*. The witness was therefore excused by the court, and for want of his testimony the cause was lost, and a verdict given for the defendant. Upon this a bill was brought in chancery for relief, to which the defendants refusing to make answer were committed for contempt of court. Such being the facts in evidence before the grand jury, when the defendants in chancery preferred their indictments, the jury, consisting as it

* See the case in Bulstrode's Rep. ii, 301 ; Moor's Rep. 833 ; Rolle's Abridg. i, 111 ; Croke's Jacob. 343.

seems of substantial and intelligent persons, refused to find the bills, and, although twice sent back by the court, resolutely persisted in their refusal. The matter excited the more notice from the circumstance that lord Ellesmere was at this time dangerously ill, and, although he afterwards recovered, was generally believed to be dying on this very day ; and it now made so much noise, that it was brought before the king in council. It was referred by him to sir Francis Bacon, sir Henry Yelverton, sir Henry Montague, sir Ranulph Crewe and sir John Walter, and, after an examination of precedents, they supported the jurisdiction of the chancellor in an elaborate decision, which put the question at rest, and seems to have been at least acquiesced in by the chief justice himself as well as the soundest lawyers of the kingdom.*

Sir Edward Coke is generally allowed to have been much in the wrong for endeavoring to maintain the jurisdiction of his court by such violent measures, and was afterwards accused at the council-board of uttering very reprehensible language on the subject from the bench. But in the business of the *commendams* he seems to have demeaned himself with a spirit of dignity, firmness, and independence, which redounds as much to his honor as the pusillanimity of the other judges does to their disgrace.

This celebrated case of the *commendams*, even more curious in its connexion with the history of the administration of justice in England than that which we have just detailed, was the following. John Clifton and William Glover brought a writ of *quare impedit* against Richard, bishop of Coventry and Litchfield, of a presentation to the church of Clifton Camville. The plaintiff's declaration made out a good title to the advowson in them ; but the bishop's plea recited, among other matters of defence, that his metropolitan having granted him a dispensation from the statute of pluralities, the king, to whom

* See a full statement of this affair in a tract printed in the *Collectanea Juridica*, v. i. n. 2. See likewise Wilson's *Life of James in Kennet's History*, vol. ii, p. 704 ; Bacon's *Letters in his Works*, v. iii, p. 284, and the cases cited in Bacon's *Abridgment*, v. iii, p. 139. Many curious circumstances regarding it are also collected in the notes to the *Biographia Britannica*.

Although sir Edward, as he could not avoid doing, acquiesced in the king's decision, yet he was not convinced that he had done wrong. In his *Pleas of the Crown*, c. 54, *Premunire*, pp. 122—125, he maintains that a judgment rendered in the king's bench could not be lawfully examined in chancery, and after citing precedents to that effect, says that the privy seal was ' obtained by the importunity of the then lord-chancellor being vehemently afraid.'

it accrued by lapse to present to the benefice in question, did accordingly present the defendant to hold the same in *commendam*. Various important questions grew out of this case, in arguing which in the court of common pleas the king was informed by Bilson, bishop of Winchester, who attended the trial at the king's desire, that the counsel for the plaintiffs had maintained several positions highly injurious to his royal prerogative, namely, that the translation of bishops was contrary to the common law, and that the king had no power to grant *commendams* but in cases of necessity, which necessity could never happen, because no clerk was bound to hospitality beyond his means, and therefore in no case could there be need of augmentation of livings. James took alarm at these dangerous doctrines, and, determined not to suffer any more discussion of points so nearly concerning his royal dignity, commanded the attorney-general, sir Francis Bacon, to signify his pleasure to the lord chief justice, that he held it necessary himself should be consulted before any further proceedings were had in the cause, which was shortly to have been argued before all the judges in the exchequer-chamber. Bacon, who seems to have acted as the chief adviser of the king in all these measures, accordingly wrote a letter to the chief justice (April 25, 1616), imparting the king's wish that the day for hearing the argument might be deferred. Sir Edward Coke, on receiving this letter, requested of the attorney-general that the like should be sent to his brethren; which being done, all the judges assembled and unanimously came to the resolution of doing their duty exactly as if the letters had not been written. Afterwards they sent a letter under their hands to the king in justification of their conduct, certifying that they conceived obedience to the letters of the attorney-general to be inconsistent with their oaths, inasmuch as they were expressly sworn to pay no regard to any letters that should come to them contrary to law, and that, the case in question being a private difference between subjects and as such earnestly calling for expedition, they considered it would be an unlawful delay and denial of justice to defer the cause: wherefore they had proceeded, according to their duty, following what to the best of their judgment they understood to be the meaning of the acts of parliament provided in this behalf. The king immediately replied that, as he would not have his royal prerogative wounded through the side of a subject, and as he held

the alleging their oaths only an impertinent pretence, therefore he peremptorily commanded them to meddle no more with the matter until they were apprized of his pleasure from his own mouth. No sooner was the king returned to the city, than all the judges were sent for to the council-table (June 6th 1616). After the king had narrated the above facts, he began by reprimanding the judges for their remissness in suffering a counsellor at the bar to impeach his prerogative, telling them it was their duty to check and bridle these impudent lawyers, who bore so little respect to the authority of the crown. Next, as to their letter, he acquainted them that to defer the hearing of a cause upon sufficient reasons was neither a denial nor a delay of justice ; it rather indicated wisdom and matureness of proceeding ; and there could never be a better reason for staying a cause than a desire to consult the king in a matter concerning his prerogative. Then he denied that the case involved merely a private interest betwixt party and party, since the royal prerogative was openly, directly, and largely disputed at the bar ; nay by virtue of that very prerogative alone did the defendant claim to hold his benefice in *commendam*. Lastly, he observed that it was a new thing for subjects to disobey the king's express command, and most of all for them to justify their disobedience by returning a bare certificate, instead of modestly laying down their reasons and then submitting the whole to his princely judgment. When the king had made this declaration, all the judges acknowledged the faultiness of their letter in respect to the *form*, and on their knees begged pardon of the king for their error. But sir Edward Coke entered into a defence of the *matter* of the letter, maintaining that the delay required would have been a denial of justice, and adding that the judges meant the case should be handled so that the royal prerogative should in no wise be questioned. The king answered that it was preposterous for them to take on themselves peremptorily to discern whether his prerogative was concerned, without asking his advice on the subject ; and, as to the rest, he called upon the lord-chancellor to deliver his opinion upon the legality of the delay. Lord Ellesmere, excusing himself from declaring his sentiments at present, desired that his majesty's counsel might first deliver theirs : upon which the attorney-general, of course, defended the king, and the other counsel concurred, for the reasons already advanced by the king. This widened the

breach still more ; for sir Edward Coke complained of the king's counsel for disputing with the judges, saying they were to plead before the judges, not to dispute with them ; to which sir Francis Bacon returned, that, by his oath of office, he was explicitly bound to proceed against any person whatever, should he be the greatest peer in the realm, who exceeded the limits of his authority or invaded the rights of the crown ; and therefore he deemed the challenge of the chief justice to be an affront, for which he and his fellows appealed to the king for reparation. To this appeal the king replied, that his counsel had done their duty and he would maintain them in it ; which ended the controversy ; for sir Edward immediately said he would not dispute with his majesty ; and the lord-chancellor then pronounced the king's requisition to have been no violation of the judges' oath or of the laws. All the lords of the council then put the question to the judges, commanding them to say whether if, in any case depending before them, the king conceived his interest to be concerned, and therefore desired to be consulted, they would accordingly stay the proceedings. The judges all answered in the affirmative, excepting sir Edward Coke, who merely said : *when the case shall be, I will do what is fit for a judge to do.* Sir Henry Hobart was so complying as to say that, for his part, he would ever trust the justice of his majesty's command. After all this discussion was over, the king made the judges promise that, in the farther argument of the *commendams*, they would carefully abstain from whatever tended to weaken or draw into doubt his prerogative, nay, would in plain terms correct the bold speeches already made in derogation thereof, and never again permit them to recur.* Satisfied with the recantation and ample assurances of the eleven judges, the king allowed the cause to proceed, and judgment was finally entered for the plaintiffs.

Such was the termination of the case of *commendams*, than which few have excited more commotion, because on the one hand the church was incensed to find the courts looking into their evasions of the law against pluralities, and the king was yet more incensed that one of his prerogatives should be

* All the proceedings in council are printed in *Collectanea Juridica*, vol. i, n. 1, and in *Bacon's Works*, vol. iii, p. 311. See likewise *Bacon's Letters*, *ibid.* p. 305. The case which occasioned the difficulty is very fully reported in *Hobart's Rep.* p. 140.

openly attacked as illegal ; and on the other hand every friend of liberty was shocked to perceive the power of the crown directly interposed for the determination of a private suit between subjects, and to see the judges personally outraged for acting according to their best understanding of the established laws of the kingdom.

Sir Edward Coke's enemies no longer thought it necessary to keep any measures with him ; for his manly conduct before the council was easily distorted into a contumacious opposition to the royal authority. The king seems even to have entertained a petty jealousy of his popularity and influence. The lord-chancellor could not forgive sir Edward's conduct with regard to the jurisdiction of the courts. The council was very much offended with him, also, for his laudable attempt, a little while before, to limit the exorbitant power claimed by the commissioners of sewers : for this inferior court demanded for its proceedings a freedom from examination every where but in the council ; whereas the king's bench had countenanced, as it was right they should do, several persons in bringing actions at common law on account of some arbitrary doings of the commissioners.* As there was now a fixed design of humbling sir Edward, in which many powerful men were embarked, it was not difficult to foresee that his great integrity, his unshaken courage and his admirable parts would prove too weak to shield him, when his personal enemies were to sit in judgment upon him, with an arbitrary and irritated king for his accuser. Accordingly, being sent for by the council, arraigned on his knees, and charged with indecent language in the king's bench concerning the court of chancery, and undutiful behaviour to the king in the affair of the *commendams*, he was sequestered from the council-table and forbidden to ride the summer-circuit as justice of assize. James, in his wisdom, also undertook to criticise sir Edward's Reports, which were already published, telling him that many extravagant opinions were there set down for positive law ; and the weak-minded pedant, who then held the sceptre of three kingdoms, condescended to find fault with the title-page of the tenth Report, because sir Edward, according to the immemorial usage of his predecessors, sanctioned by

* Moor's Reports, pp. 825, 826 ; Blackstone's Commentaries, vol. iii, p. 73. The act of council on the subject may be found in Callis' Reading on the Statute of Sewers, p. 76.

divers acts of parliament,* therein styled himself chief justice of England. To complete sir Edward Coke's humiliation, Suffolk, the lord treasurer, insolently reflected on him for allowing his coachman to ride before him bareheaded, imputing it to sir Edward as an arrogant assumption of state, which he was not entitled to challenge. Sir Edward's removal followed soon after (Nov. 1616), the place of chief justice of the king's bench being given to sir Henry Montague.

With regard to the disgrace of sir Edward Coke, it is remarkable that those persons, who were most active in bringing it about, were personally benefited by his removal. Sir Francis Bacon had long been opposed to him, from a cause already stated, and was, moreover, not a little apprehensive that sir Edward would be thought a more eligible person than himself to succeed the lord-chancellor Ellesmere. Sir Henry Montague, who was another of the king's counsel and one of those to whom the dispute between the courts was referred, was promoted to the office of chief justice in the room of sir Edward. Sir Henry Yelverton, the solicitor-general, was a servant of the Howards and owed his promotion to Somerset, and therefore had private differences with sir Edward Coke on account of the business of Overbury; and he favored Bacon's suit for the great seal in order to obtain the post of attorney-general. If these facts are not enough to lead us to suspect the motives of those, who produced the downfall of sir Edward Coke, we shall be satisfied of the true cause of it by referring to Bacon's Letters,—an authority, which, in an affair so nearly concerning the writer, must be considered absolutely incontestable. According to the statements in these letters it appears that, during the earl of Somerset's prosperity, sir Edward Coke agreed, on the resignation of the then incumbent, sir John Roper, to admit two persons to hold the lucrative office of chief clerk for enrolling pleas in the king's bench in trust for the favorite. Upon the fall of Somerset, an overture was made to the chief justice by sir Francis Bacon, that he should admit trustees for the new favorite, sir George Villiers, afterwards duke of Buckingham; to which sir Edward made no other reply than that *he was old and could not struggle*. This being understood to signify compliance, sir John Ro-

* See the rolls and statutes to this effect cited in the third Institute, pp. 74, 75.

per immediately surrendered (July 1616) and received the title of lord Teynham as a recompense. But sir Edward Coke was now of another mind ; and the office being entirely at his disposal, he intimated a design of making use of it to augment the salaries of the judges in his court ; at which Villiers was so much exasperated that he caused sir Edward's suspension to be changed into removal, for the purpose of finding a more accommodating chief justice ; and it was then made a preliminary condition to sir Henry Montague's appointment, that he should enter into a written obligation to admit the trustees of Villiers.

Thus it was that the ornament of English jurisprudence was sacrificed to the intrigues and avarice of a court minion. Not that sir Edward Coke was wholly free from imperfections as a judge ; for he was frequently charged with, what it is probable enough was among his faults, a tendency to pride and imperiousness of deportment. But that he was eminently incorrupt in the administration of justice none can deny ; and that he was guilty of no misconduct, which called for high censure, is plain from the circumstance that he might have been restored to his office, if he could have humbled himself to comply with the requisitions of Buckingham.

The great consequence, which sir Edward Coke's wealth, rank, and talents gave him, and the activity of his disposition, prevented his continuing long in disgrace. A few months after his displacement, having business with sir Ralph Winwood, secretary of state, who was known to have great interest with Buckingham, he voluntarily proposed to sir Ralph what he had before discountenanced when attempted by the lady Hatton, a match between the earl's brother, sir John Villiers, and his own youngest daughter. The proposal, being communicated to Buckingham, then attending upon the king in Scotland, met with his approbation. But it soon appeared that the match, notwithstanding the greatness of the persons interested in promoting it, was not in a way to proceed with facility ; and this domestic arrangement not only occasioned great disquietude in sir Edward Coke's family, but in process of time ripened into an affair of state. For lady Hatton, displeased with her husband for his former opposition to this match, and resenting his present endeavor to dispose of her daughter without her leave, carried away the young lady and concealed her in the house of sir Edmund Withipole. Sir

Edward Coke immediately wrote to Buckingham to procure a warrant from the privy council for the restoration of his daughter, but in the mean time, ascertaining where she was lodged, he went with his sons and took her away by force. Upon this lady Hatton appealed to the privy council. As the lord-keeper, Bacon, was fearful of losing the favor of Buckingham by this match, he opposed it to the utmost, and thereby incurred the very danger he was trying to avoid; for Buckingham highly resented this proceeding, and his mother, the lady Compton, lost all patience and treated the lord-keeper with great indignity. Sir Francis Bacon, notwithstanding, encouraged the attorney-general to file an information in the star-chamber against sir Edward Coke, on the complaint of lady Hatton. But harmony was brought about in a short time by means of the two ladies, Hatton and Compton, who came to an understanding on the subject, in consequence of which the suit in the star-chamber was suspended, sir Edward Coke and his lady partially reconciled, and sir Francis Bacon restored to the good graces of Buckingham. The very day of the king's return from Scotland (Sept. 15th 1617), sir Edward Coke was restored to favor, reinstated in his place of privy-counsellor, and admitted to much private conference with the king. Soon after this, sir John Villiers married his daughter with great splendor at Hampton-Court; but sir Edward was obliged to give his daughter a very large fortune and thus pay dearly for the honor of an alliance with Buckingham. Lady Hatton also made considerable settlements in favor of sir John Villiers on the same occasion, and by this liberality recovered her freedom: for at the time of the marriage she was confined upon the complaint of sir Edward. The quarrel between them still continued to be manifested in various ways. Soon after her release, she entertained the king, the duke of Buckingham, and the whole court, without inviting her husband. Many letters of sir Edward and lady Hatton, written at this time, are still preserved, in which they show great resentment towards each other; and the difference proceeded to such extent, that we find lord Houghton was committed for having, in conjunction with lady Hatton, framed some scandalous libels on sir Edward Coke. Several years elapsed before the parties were at length reconciled, by the mediation of the king (July 1621).

As a privy-counsellor, sir Edward Coke was now treated

with great consideration, and engaged in many important commissions, of which he acquitted himself to the entire satisfaction of his master. His old enemy, sir Francis Bacon, now lord-chancellor, seeing sir Edward thus highly esteemed and apparently aiming at the post of lord-treasurer, dropped his animosity and began to represent him in a more favorable light to the duke of Buckingham and king James. Sir Edward is charged with making use of his power, during this turn in his affairs, to punish his former persecutors; and it is very certain that, in several instances, he was enabled to make them feel the weight of his resentment, although he does not seem ever to have sought for such opportunities. As instances of this we may notice the cases of lord Suffolk and sir Henry Yelverton, both of whom, as we have seen, were enemies of sir Edward Coke. While the latter, as privy counsellor, was commissioned to sit in the court of star-chamber, Suffolk and his lady underwent a severe prosecution for corruption; and sir Edward acted a distinguished part in the investigation of their crime. Not long afterwards sir Henry Yelverton was prosecuted in the same court, for inserting some clause in a charter for the city of London without any warrant; and on this occasion sir Edward Coke is affirmed to have made a long and bitter speech in the star-chamber, and then pronounced a heavy sentence, which, however, the rest of the court mitigated. If sir Edward did allow his personal feelings to influence his opinion in these cases, we shall presently see that he conducted very honorably and delicately with regard to another distinguished criminal, who had formerly been opposed to him, namely, the lord-chancellor St Albans.

The king's affairs at this period (1621) absolutely requiring a parliament to be called, the lord-chancellor undertook to prepare things for the meeting, and received every assistance from sir Edward Coke; but when the parliament was assembled, it appeared that sir Edward, who was returned a member, intended to do very differently from what was expected of him by the court; for he spoke very warmly in the many debates in this parliament on the subject of freedom of speech, on the increase of popery, and on the abuses of prerogative. In the charges, which the same parliament made against the lord-chancellor, sir Edward was on the committee for preparing the articles, and conducted himself mildly, but with firmness; so that we may believe the animosity once subsisting

between these eminent men was now entirely extinguished ; and happy would it have been for them both, if, instead of indulging it so long, they had always conspired to promote only the good of their common country. The vigorous proceedings of the commons on account of the imprisonment of sir Edwin Sandys by the king, for his activity in the house, having produced a rupture between the king and commons, in consequence of which the principal members of the house were imprisoned or despatched upon some foreign mission, we find that sir Edward Coke and sir John Philips were committed to the tower as the two leading men in the opposition (Dec. 27, 1621). Sir Edward's chambers in the temple were also broken open and his papers delivered to sir Robert Cotton to examine. A week or two afterwards (Jan. 6, 1622) the parliament was dissolved. On the very day of its dissolution an attempt was made by the ministry to prove sir Edward guilty of misconduct in the affair of the earl of Somerset, but without success ; whereupon he was again sequestered from the council, James being so much incensed as to say that *he was the fittest instrument for a tyrant that ever was in England*,—with how much truth the cause in which sir Edward suffered will bear witness. We will mention one more remarkable fact, which, at the same time, shows the hostility of the court to sir Edward, and the estimation in which he was held by one of the most eminent of his contemporaries. After sir Edward's chamber had been searched and he himself expelled the council, a prosecution was set on foot against him by the court for a pretended debt of old standing due sir William Hatton. A trial was had, but nothing being proved, notwithstanding the industry of his old antagonist, sir Henry Yelverton, a verdict was given for the defendant. When a brief in this cause was offered to the prince's attorney-general, sir John Walter, afterwards chief baron of the exchequer, he rejected it with these memorable words : *Let my tongue cleave to the roof of my mouth whenever I open it against sir Edward Coke.*

What it was, that occasioned such a sudden revolution in sir Edward Coke's sentiments and converted him from a confidential servant of the crown into one of its warmest opponents, it is impossible at this day to ascertain. There is some reason to suppose, however, that the death of his friend, sir Ralph Winwood, which happened not long before this change, deprived him of his firmest support in the council and with

the king. Perhaps he became disgusted with the arbitrary measures pursued by the ministry ; for we know that he always leaned to the popular side, when first in power ; which circumstance prejudiced king James against him almost from the beginning, and was among the ostensible causes of sir Edward's removal from the post of chief justice of the king's bench. Whatever may have been the motives of sir Edward's conduct, it is certain that he was now one of the most zealous defenders of the rights of the commons, so that, beside his exclusion from the council, the king gave him some commission to perform in Ireland (1625), according to the practice of those days, in order to remove him from court and keep him in a kind of honorable banishment. How sir Edward excused himself from this employment, we are nowhere told : perhaps the short-lived popularity of the duke of Buckingham this year, which was so great that sir Edward Coke, in the house of commons, complimented him with the title of *savior of the nation*, disarmed the court of a portion of its vindictiveness towards the parliamentary leaders. But sir Edward did not seek to be restored to place, and remained out of favor at the demise of king James.

At the beginning of the next reign, the new king was so much prepossessed against sir Edward as to refuse him admittance to his presence when sir Edward would have waited upon him in testimony of duty and loyalty ; and when the court found it necessary to summon a parliament for supplying the wants of Charles, sir Edward Coke, to prevent his being chosen, was nominated sheriff of the county of Bucks. He did all that he could to avoid serving, and for that purpose took exceptions against the oath, which he transmitted to the attorney-general ; but the council and judges thought only one of the five objections reasonable, in respect to which the oath was amended. Sir Edward was accordingly compelled to serve, and he, venerable as he now was from his great age, attended the judges at the assizes, who had himself been chief justice of England.* But in the third parliament of this reign (1628) sir Edward was elected knight of the shire for the county of Bucks, with augmented popularity, and augmented zeal against the crown, on account of the persecution he had undergone. In this parliament were sir Francis Seymour, sir Thomas

* Rushworth's Collection, i, p. 197.

Wentworth, sir Robert Philips, sir John Eliot, sir Miles Hobart, sir Peter Heyman, Pym, Selden, Hollis, Valentine, and many others, who, like sir Edward Coke, were embittered against the court by personal wrongs, as well as by their patriotism. Among them sir Edward was preeminent for the service he did his country, not only by speaking freely for the redress of grievances, arguing boldly in vindication of the freedom of the subject, and strenuously maintaining the privileges of the house of commons,—but also more particularly by proposing and framing the celebrated PETITION OF RIGHTS.* When the debates happened in the same parliament concerning the duke of Buckingham, sir Edward Coke, then nearly eighty years old, took the lead by citing precedents in support of the right of the house to proceed against any subject, how exalted soever in rank, for misleading the king, and finished by declaring his firm belief that the duke was the sole cause of the miseries of the nation, and of all the disasters that had befallen the kingdom. Whether it was that the patriots of that age were more in earnest than at present, or that the temper of the times inclined and authorized public speakers to indulge in greater exhibitions of feeling,—we are informed that sir Edward Coke was forced to sit down, when he began this speech, through abundance of tears, whilst other members were so much oppressed with grief as to be incapable of joining in the discussion at all. But after sir Edward Coke had broken the ice by denouncing the duke of Buckingham, an acclamation of applause burst from the house, which, it is well known, the next day presented the king a spirited remonstrance against the conduct of the duke of Buckingham.

Sir Edward's exertions in this parliament closed his political career. After its dissolution he retired to his house at Stoke-Pogey in Buckinghamshire, where he spent the remainder of his life in quiet seclusion, universally respected and esteemed; and there he died, September 3d, 1634, in the eighty-fifth year of his age, expiring with these words on his lips, *thy kingdom come, thy will be done*. Whilst he lay upon his death-bed, sir Francis Windebanke came, by virtue of an order of council, to search his house for seditious papers, and carried away his four Institutes, together with fifty-one other

* Rushworth's Collection, vol. i. p. 558.

manuscripts, and his will, in which he had made provision for his family. The books and papers were kept until the year 1641, when one of the sons of sir Edward moved in the house of commons that the papers taken by sir Francis Windebanke might be restored to his brother, sir Robert Coke, which the king permitted, and such as could be found were delivered up to the family ; but the will was either lost or destroyed.

Sir Edward left a numerous posterity to inherit his fame and wealth, having seven sons and three daughters by his first wife and two daughters by his second : to whom he left such large possessions, that Fuller, in his *Worthies of England*, says all his sons might seem elder brethren. His family has ever since been of great consequence, and in the reign of George I his descendant and representative in the male line, sir Thomas Coke, was ennobled by the title of baron Lovell, and afterwards raised to the superior rank of viscount Coke and earl of Leicester.*

Having narrated the incidents of sir Edward Coke's life, we now proceed to make some few remarks concerning him which could not be easily introduced before, and to give a particular account of his writings, the consideration of which we have purposely deferred to the last.

In his person sir Edward was remarkably well proportioned, with regular features, a dignified countenance and an air full of gravity and composure. He was very nice in his dress, being accustomed to say that *the outward neatness of our bodies should be a monitor of purity to our souls*. In his pleadings, conversation and judgments, he was generally very concise, although, from the vice of the age, sometimes rather too diffuse in his formal speeches. In his professional practice he always endeavored to cultivate sobriety and moderation ; saying, *if a river swell beyond its banks it loseth its own channel*. Fuller has a very curious passage concerning him nearly to this effect : Five sorts of people he used to fore-doom to misery and poverty, namely, chemists, monopolizers, concealers, promoters, and rhyming poets : for three things he would return solemn thanks to God, which were that he never gave his body to physic, nor his heart to cruelty, nor his hand to corrup-

* In the preceding narrative we have been much indebted to the *Biographia Britannica*, which is to be understood as our authority wherever none is cited.

tion : and in three things he did much applaud his own success, to wit, in his fair fortune with his wife, in his happy study of the laws, and his free coming by all his offices, *nec prece nec pretio*, neither begging nor bribing for his preferment.—The rank, which he attained, sufficiently indicates the estimation with which he was regarded as a lawyer ; for, as we have just seen, he valued himself upon having gone through the successive stations of queen's solicitor, speaker of the house of commons, attorney-general and chief justice of both benches, by his merit alone, not by any unworthy acts of courtly servility. How sure a friend he was to the church may be judged from what we have said heretofore, as well as from the fact that when a powerful nobleman was inclined to question some of the rights of the cathedral church of Norwich, sir Edward prevented it by declaring that, if the matter was pursued, *he would put on his cap and gown again and follow the cause himself through Westminster-hall*. As he took for his motto *prudens qui patiens*, so it appeared that from all his reverses of fortune he rose more powerful than before ; verifying in this the pithy character once given him by king James, that *whichever way he was thrown he would fall upon his feet* ; for whatever credit he happened to lose at court was more than compensated to him by the extensive influence which he possessed in the country. Finally, although his eminence and uninterrupted success in his profession imparted to his character a degree of pride, which sometimes betrayed him into conduct that it would be useless to attempt to justify, but which his enemies magnified to his disadvantage,—still it is certain that sir Edward Coke was exceeded by few of his countrymen in the qualities of an acute lawyer, able judge, and ardent, public-spirited patriot.

Of the voluminous writings of sir Edward Coke, embracing almost the whole range of the common and statute-law as it existed in his time, those published earliest were his Reports, which originally appeared in eleven parts at different periods, the first part in 1600, when its author was attorney-general to queen Elizabeth, and the last in 1615, when he was chief justice of the king's bench under James. Two additional parts were also printed some years after his death, which are much less valuable as to the nature of the cases, less complete, and less authentic than the preceding parts, because wanting the revision of sir Edward. The great defect of Coke's Reports, as indeed of all his works, is the total want of meth-

od by which they are distinguished even above the immethodical writings of his contemporaries. His Reports do not contain a regular statement of the case, with the arguments of counsel and decision of the court distinctly set down; but these particulars are blended with extra-judicial remarks that happen to drop from the judges, and mixed up with numberless desultory observations which the reporter's own ill-arranged learning suggests; so that it is often no easy task to ascertain the points of law raised in the case and actually adjudged by the court as a solemn precedent. But, notwithstanding this serious objection to the Reports, they undoubtedly deserve the praise bestowed on them by sir Francis Bacon, in his Proposition touching the Amendment of the Laws of England, when he said that, but for them, the law would have been 'almost like a ship without ballast.' No stronger evidence of their high reputation need be assigned, indeed, than the fact that they alone are generally cited in our law-books without the author's name, and denominated, by way of eminence, *the Reports*. A large portion of the decisions recorded in them are now become wholly obsolete, and the improvements of modern law have diminished the usefulness of the rest; but, as very many of them are what is technically styled *leading cases*, the Reports must ever continue to be valued and studied by those, who wish to examine legal principles at their fountain-head.

While sir Edward Coke was in disgrace, his Reports, as we have already intimated, underwent a very severe scrutiny from his enemies, who were eager to seize upon the slightest pretext for humbling the spirit of the chief justice. Every mistake in point of law, nay the least verbal inaccuracy, was imputed to him as a crime. It is to be remembered that the wise institution of fixed reporters, to which we owe the nine Year-Books, and which has been imitated with so much advantage and success in our country, was not long kept up in England. Nor was the place of these reporters immediately supplied by private individuals. Sir Edward Coke tells us, in the preface to the third Report, that, beside the Year-Books and his own collections, there were only three volumes of printed reports then in being, namely, sir James Dyer's Reports and Plowden's Commentaries. Hence it arose that an error in reporting was considered not merely, as at present, a literary defect of the work, but a high offence against the

courts and the crown. When, therefore, sir Edward Coke was forbidden to ride upon the circuits, the king charged him to employ himself during the vacation in revising and correcting his Reports, wherein the king said he was given to understand many dangerous novelties, offensive opinions and peremptory decisions were recorded as the law. In obedience to this injunction sir Edward prepared a list of a few errors of a very trifling nature, and presented them to the king; with which the king or his advisers not being satisfied, selected a number of passages from the Reports, and these not the points adjudged in the cases, but extrinsic and independent remarks, which the king desired to have explained, appointing lord Ellesmere to receive sir Edward Coke's excuse or apology. The exceptionable passages were finally reduced to five, all which sir Edward defended so triumphantly, that his enemies were for the present completely silenced. About a year afterwards, however, while sir Francis Bacon was lord-keeper, the complaint concerning the Reports was revived; upon which sir Edward boldly demanded to have the twelve judges called upon, as well to determine what cases in his Reports, if any, were erroneous, as to certify what cases he had published for the maintenance of the royal prerogative, the safety of the church-revenues, the quieting of men's inheritances, and the general good of the realm. Sir Edward's enemies shrunk from an inquiry, which they felt conscious must redound so much to his honor and to their discredit, and here the affair was dropped, after the Reports had passed through an ordeal from which few would have come forth equally free from reproach.

The next work of sir Edward Coke's published during his life-time was the Book of Entries, which, indeed, appeared in 1614, before the completion of his Reports. More recent collections of entries refer to this work as containing very elaborate precedents, especially in real actions; but the great alterations of the law with respect to practice since the time of Coke having brought new forms into use and even changed the language of the record, modern compilations on the subject of pleading have superseded Coke's Book of Entries. This volume may be considered as in some measure a supplement to the Reports, because it exhibits the entire record of many of the cases there reported; for which reason, probably, sir Edward omits to mention it while enumerating his works in the preface to the first Institute.

The preceding works were written and published by sir Edward, as he repeatedly observes in his Reports, either amid the pressure of many important affairs, or else in the brief intervals of rest which he enjoyed from the exertions required by his public employments, 'ascita,' he says in one place, 'ascita alacriter industria mihi ex more solito perquam familiari in consortem.' After his final rupture with the court, still retaining his industrious habits in extreme old age, he devoted himself to the completion of his last and great work, the Institutes of the Laws of England, consisting of four parts, the first, a Commentary upon Littleton, the second, an Exposition of many ancient and other Statutes, the third, concerning High Treason and other Pleas of the Crown, and the fourth, concerning the Jurisdiction of Courts. 'I have termed them Institutes,' says Coke, 'because my desire is, they should institute and instruct the studious, and guide him in a ready way to the knowledge of the national laws of England;' and the general consent of the bar for a century and a half spontaneously continued to pay these juridical labors of sir Edward Coke a deference, which in any other man it would have seemed alike arrogant to claim, and presumptuous to anticipate.

The first Institute is a perpetual Commentary upon a short Treatise of Tenures written by sir Thomas Littleton, an eminent judge of the common pleas in the reign of Edward IV. It is not certainly known at what time the original edition of this tract appeared; but it is generally supposed to have been the year 1481; and therefore the copies of this edition are esteemed a great typographical curiosity, because among the earliest specimens of the art of printing in England. The work itself is not very full; nor is its arrangement remarkably happy. Yet it is esteemed one of the most perfect of the ancient books of common law; and, although Littleton almost never adduces any authority in support of his opinions, his credit has always been so high, that in the earliest times any thing cited from him was no more considered open to dispute or question than a precedent solemnly adjudged by the courts. And sir Edward Coke undoubtedly expressed the common sentiment of his contemporaries when he said, in the tenth Report: 'Littletoni Tenuras quod attinet,—hoc affirmo, et contra refragantes quoscumque ratum faciam, opus esse suo genere adeo absolutæ perfectionis, adeoque de erroribus libe-

rum, atque aliquod aliud mihi notum humanam tractans eruditionem.' But, next to the permanent interest and importance attached to his subject, the great excellence of Littleton, as Reeve observes in his *History of the English Law*, seems to be a plain, clear, simple and expressive style united with profound but unostentatious knowledge, and a comprehensive way of thinking:—qualities, in which sir William Jones very aptly compares Littleton with the modern jurist Pothier.

Sir Edward Coke's *Commentary upon Littleton* was first published in 1628, and again printed in 1629, under the author's personal revision; for which reason the second edition is always looked upon as the correct text of the *Commentary*. The work has now reached a seventeenth edition in England, the tenth and each subsequent impression to the thirteenth having been much improved by the addition of references, and the thirteenth with the later editions being enriched with notes from manuscripts of lord Nottingham and sir Matthew Hale together with copious annotations by Hargrave and Butler. The seventeenth edition also contains additional notes extracted from the papers of sir Francis Buller. If to these we add the notes of the American editor, Mr Day, and the commentary of Houard upon the text of Littleton, we shall have a body of elaborate critical and explanatory annotations upon this little tract, which are scarcely exceeded in bulk by those subjoined to *variorum* editions of the Greek and Roman classics.

With regard to the merit of Coke's *Commentary*, it cannot be denied that, with many excellencies, it has also many faults. The quaintness and affectation of the style in which it is written, so far as they are defects, may, perhaps, be chiefly charged upon the age, whose delight in significant expressions often degenerated into a love of verbal conceits. Yet this very quaintness is not destitute of its charm; nor does it prevent the language from being precise, clear and expressive. The great objection to sir Edward Coke is the rambling, diffuse, immethodical and digressive manner, which pervades all his writings and greatly impairs their usefulness. Much system, it is true, was not consistent with the nature of a perpetual commentary; because it is not to be supposed that a series of explanatory notes upon the substance, the words and even the *etceteras* of a treatise, should constitute a regular whole; but the evil is that, in each individual comment, sir Edward Coke

wanders from subject to subject with a pertinacity in disorder, which is really unpardonable. There seems to have been much truth, as well as bitterness, in the remarks applicable to this point, made use of by sir Francis Bacon in his famous letter of expostulation written to sir Edward Coke.—‘When you wander,’ said Bacon, ‘as you often delight to do, you wander indeed, and give never such satisfaction as the curious time requires. This is not caused by any natural defect, but first for want of election, when you have a large and fruitful mind, (which) should not so much labor what to speak, as to find what to leave unspoken. Rich soils are often to be weeded.’—Another defect in the Commentary arose from sir Edward’s ignorance, or at least uniform neglect, of the feudal law. ‘I do marvel many times,’ observed sir Henry Spelman, ‘that my lord Coke, adorning our law with so many flowers of antiquity and foreign learning, hath not, as I suppose, turned aside into this field, i. e. feudal learning, from whence so many roots of our law have, of old, been taken and transplanted.’ But the absence of illustrations drawn from the law of feuds is supplied by Butler, in his notes, in a way far more satisfactory than sir Edward could have had the means of doing, and so as to leave the student nothing to regret on this subject. Notwithstanding these defects, the immense erudition of Coke’s Commentary, and his wonderful sagacity in detecting the grounds and reasons of the law, are unquestionable, although it is not always possible to find out the application of his references, and his anxiety to leave nothing unexplained often betrays him into assigning childish and frivolous reasons for things.

Sir Edward Coke designed his work, as at the time it appeared and long afterwards it was fitted to be, as an institute or introduction for the use of students, no less than as a repository of his own extraordinary learning. But, now that the irresistible tide of improvement hath swept away a very large portion of the law comprized in the Commentary, and brought along with it a new system of legal doctrines, better adapted to the wants and spirit of the times, it may reasonably be doubted whether Coke upon Littleton is entitled to the place, which it has hitherto held, of a leading elementary treatise in every plan of legal education. It can be said, on the one side, that a student should become acquainted with Coke as the great authority on all subjects connected with the ancient law;

and on the other it might be maintained, that the same law is to be found in a more agreeable form in the modern compilations and digests, and that therefore the first Institute should be wholly discarded. There is, however, a medium between these two methods, which is, to read Coke at the close, instead of beginning, of the course of preparatory legal study; and this we cannot but think preferable to the method recommended by Hoffman, in pursuance of general custom, rather than for the soundest reasons, of placing Coke upon Littleton at the head of the doctrine of real rights and almost at the very opening of municipal law. Condemning the student, at such an early period of his novitiate, to the revolting task of toiling through the confused, harsh, uncouth and antiquated pages of Coke is not very likely to conciliate his mind to legal inquiries, nor to give it those habits of systematic investigation, which are peculiarly needful in the science of law. Besides, a student cannot then peruse Coke upon Littleton with advantage; because it is impossible for him to comprehend fully a large portion of it, and still more impossible for him to discriminate between what is law at the present day and what is not, especially considering the difference between the common law as acted upon in the United States and as understood in England.

The rest of sir Edward Coke's works are posthumous. The second Institute is a commentary upon Magna Charta, the statutes of Merton, Marlebridge, Westminster and others among the older laws, together with a few enacted in later reigns, which sir Edward has expounded after the manner of his Commentary upon Littleton, with the same acuteness and profound erudition, and not less defect of literary taste. The third and fourth Institutes have more of the form of systematic digested treatises than the two preceding; and the fourth, especially, abounds with curious information extracted from the rolls, and still of the highest value on subjects connected with the history and antiquities of the English courts. When to these we add three short tracts, namely, a Reading on Fines, a Treatise on Bail and Mainprize, and the Complete Copyholder, we shall have enumerated all the legal publications of sir Edward Coke.

The three last portions of the Institute were not published until 1642 and 1644, when the originals having been restored, as we have already noticed, to the son of sir Edward, the

commons ordered an edition to be printed. Roger Coke, who furnished us with this fact in his *Detection of the Court and State of England*, says that, in the troubles of this period, it was remarkable that the advocates of the king chiefly maintained his cause out of sir Edward's third Institute, although it was rescued from oblivion and published by the house of commons.

It is unfortunate that sir Edward did not live to complete and print these himself; for, owing to their incorrectness, they have never enjoyed so much authority as the *Commentary upon Littleton* or the *Reports*. Sir John Kelyng mentions a consultation of the judges upon some point of high treason shortly after the restoration, at which 'it was observed that, in these posthumous works of sir Edward Coke, of the *Pleas of the Crown* and *Jurisdiction of Courts*, many great errors were published.'—In 1669, also, Prynne, the celebrated author of *Histriomastix*, published a volume of *Animadversions* on the fourth part of the *Institutes*, and in which he professes to have detected many illegal doctrines and many statements resting upon very slender proofs.

The exalted character of sir Edward Coke in public and private life conspired with the sterling excellence of his works to give them an authority more decided and extensive, than has ever been enjoyed by the legal writings of any other of his countrymen. The most discriminating lawyers have not scrupled to designate him as the great oracle of English jurisprudence. The influence of his works grew up with the gradual publication of his *Reports*, while he still continued one of the highest law-officers of the crown, and was accustomed to the deference of the bar, and the reverence of the rest of the kingdom, as the head of the courts of common law. When he stood forth as the bulwark of the commons against the encroachments on their rights, which the king esteemed it the prerogative of royalty to make, the celebrity of the patriot ensured celebrity to his legal opinions. The subsequent appearance of the *Institutes*,—of the first, which, bulky as it is, reached a second edition in the short space of a year,—and of the rest, which came forth most opportunely at a time when the questions agitated between king Charles and his people made continual reference to the *Institutes* necessary,—the publication of these firmly established the credit of sir Edward Coke, and, as it were, caused his opinions to be interwoven

with the very fabric of the constitution of England. The Reports and Institutes cover the whole ground of the common law, from the prerogatives of the king and the privileges of parliament down to the lowest copyhold-tenure and the rights of villenage itself, expounding all the complicated doctrines embraced in these wide limits with a comprehensiveness in the design and a completeness in the filling up, which it was far beyond the skill of any of his contemporaries to out-do, excepting only sir Francis Bacon. And the writings of sir Edward undoubtedly effected no little of what the English Tribonian had so much at heart, namely, the amendment of the laws of his country by reducing them to an uniform system. For the English Institutes, although executed in a less masterly manner than the Roman, obviously stand, like the latter, between the old and the new jurisprudence, serving at the same time as a digest of the one, and as the foundation on which the other has been built up by the Hales, the Holts, the Mansfields and the Blackstones, who have flourished in England since the restoration of the Stuarts.



- ART. XIV.—1. *An account of the Varioloid Epidemic, which has lately prevailed in Edinburgh and other parts of Scotland; with observations on the identity of Chicken-Pox with modified Small-Pox: in a letter to sir James M^r Grogg, Director-General of the army medical department, &c. &c. By John Thomson, M. D. F. R. S. E. Surgeon to the Forces, &c. London and Edinburgh. pp. 400. 1820.*
2. *A History of the Variolous Epidemic, which occurred in Norwich in the year 1819, and destroyed five hundred and thirty individuals; with an estimate of the protection afforded by Vaccination, and a Review of past and present opinions upon Chicken-Pox and modified Small-Pox. By John Cross, member of the Royal College of Surgeons in London, &c. London. pp. 296. 1820.*

THE subject, to which the works before us relate, has within a few years excited much attention in Europe, both in the medical profession and in the public at large; yet it has scarcely been heard of on this side of the Atlantic. So completely have we been protected, in this country, by the practice of